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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,952	12/05/2001	Peter Kalisch	400004-2018	8674

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EXAMINER

CHIN, PAUL T

ART UNIT	PAPER NUMBER
3652	

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/937,952

Applicant(s)

KALISCH ET AL.

Examiner

PAUL T. CHIN

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 March 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's amendments filed October 3, 2005, and March 6, 2006, and the arguments presented therewith have been fully considered and are not persuasive. **THIS ACTION IS MADE FINAL.**

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 11 and 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant recites a phrase, "pouches are picked up and raised with a gripper mechanism" in claim 9, line 5, by adding a new method of picking up. Specifically, applicant describes on page 3, paragraph 8:

The gripper elements 22 (or in each case one pair) are movable in a direction of arrows 28 and may be operated by compressed air.

It is not clearly understood how "the gripper elements 22" are movable by compressed air in a horizontal movement as shown in figure 4.

Applicant also states on page 3, paragraph 8 :

This is shown in Figure 5 where extensible pistons 30 move in the direction of arrows 32.

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It is also pointed out that it is unclear how "the piston 30" are "extensible" in the direction of arrow 32. It is unclear as to how the "pistons" are originally positioned in relation to the gripper element 22, what cause the "piston" to extend.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 9-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recited claim 13 is vague and indefinite. Applicant recites, "a main extension plane contains all the lateral edges of said pouches" in claim 13, lines 1-2 and later recites "the main extension plane of each pouch" in line 3. The recited phrase "a main extension plane" is unclear because applicant contains all the lateral edges of said pouches.

Contrary to the previously claim, applicant further recites "the main extension plane of each pouch", which applicant does not clearly define. Moreover, there is no antecedent basis for "the lateral edges of said pouches" (claim 13, line 2) or "the main extension plane of each pouch" (claim 14). Further, it is not clearly understood as to how "the main extension plane of each pouch is gripped substantially vertical". Also note that applicant recites a method for picking-up and handling pouches in claim 9. However, claims 10-15 recite apparatus claims and it is unclear as to whether applicant is claiming method claims or apparatus claims.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 9, and 11-15, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Snyder (3,954,165) (see Paper 12).

Snyder (3,954,165) discloses a method for gripping rectangular pouches, comprising picking up the pouches (22,22) with a gripper mechanism having finger-like gripper (72,74) (see Fig. 5) arranged in a substantially comb-like manner wherein the gripper elements are moved by an extensible piston member (80,82) (See Figs. 3 and 5) in a parallel path. Figures 3 and 4 show a gripper assembly (72,74,86) being arranged in a substantially comb-like manner (see Fig. 3) to substantially hold, pickup, and moves the article (22) (Col. 6, lines 5-43). And then, a pusher member (86) pushes the gripped articles in a longitudinal direction.

Re claim 12, an extendible piston (80,82) to clamp a pouch as shown in figure 3.

Re claims 13 and 14, figure 3, as best understood, shows the pouches are gripped in an orientation, which is about zero, less than 60 degree.

Re claim 15, Fig. 3 shows each pouch stands on a horizontal orientation.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said

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subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 9-11 and 13-15, best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunter (4,768,642) in view of Carlsson et al. (3,822,528) (see IDS).

Hunter (4,768,642) discloses a method for handling articles (70), comprising handling the articles by a gripper mechanism having finger-like gripper (26,26,28) (see Figs. 1 and 1A) arranged in a substantially comb-like manner and that moved in a parallel path. Note that the gripper element has parallel arms (30,32) guided by bearings (34,36) to be able to move in a horizontal path and push the articles as shown in figures 1 and 1A. Hunter (4,768,642) also shows another embodiment having a plate (102) in figure 5 to push the articles. Hunter (4,768,642) does not show a method of picking up the articles. However, Carlsson et al. (3,822,528) teaches a gripper element having a horizontal plate (11) and a pivotal end plate (12) to pick up a row of pouches as shown in figures 1-8. Accordingly, it would have been obvious to those skilled in the art to modify the gripper element (28) of Hunter (4,768,642) by providing an end plate (12) of Carlsson et al. (3,822,528) on the distal ends of the Hunter's horizontal plate (28) so that the modified Hunter's device not only push the articles but also pick up the plurality of articles or pouches and moved towards the table (5) (Fig. 1). Also note that it would have been obvious to those skilled in the art to provide the orientation of each pouch between fins (16,16) of the conveyer (12) as a horizontal orientation to stabilize the larger pouches and firmly handle the pouches.

Re claim 10, figures 1 and 1A show at least 5 articles.

Re claim 11, the modification of Hunter's device would provide a pivotal end plate (12) or a substantially movable end plate of Carlsson et al. (3,822,528).

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Re claims 13-15, Figures 1-2, as best understood, show the orientation of the articles as required in the recited claims.

Response to Arguments

10. Applicant's arguments with respect to claims 9-15 have been considered, but they are not persuasive.

Applicant argues, "Snyder does not teach picking up pouches with a gripper mechanism" and "discloses a plurality of extending elements (96) which are loading pushers with an article engaging end 99 to push". The argument is incorrect. Snyder (3,954,165) shows in figures 3 and 4 a gripper assembly (72,74,86) being arranged in a substantially comb-like manner (72,74 of Fig. 3) to substantially hold, pickup, and moves the article (22) (Col. 6, lines 5-43) and a pusher member (86) pushes the gripped articles in a longitudinal direction. Note figure 5 also shows that the gripper element (72,74,86) are moved in a substantially parallel between adjacent longitudinal sides of adjacent pouches (22,22). Though the grippers (72,74) are substantially moved horizontally at a pivot (84), it is pointed out that they can be substantially moved in a parallel path 72 of Fig. 4).

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (571) 272-6922. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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